



CALIFORNIA STATE BOARD OF EDUCATION

SEPTEMBER 2004 AGENDA

SUBJECT

Assembly Bill 1994: Statewide Charter Schools: Approve Commencement of Rulemaking Process for Amendments to Title 5 Sections 11967, 11968, and 11969.



Action



Information



Public Hearing

RECOMMENDATION

Approve the commencement of the regulatory process for the proposed regulations, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking, and direct staff to conduct a public hearing on the proposed regulations.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Background information, a summary of the proposed regulations and a copy of the regulations were provided to the State Board as an August Information Memorandum.

SUMMARY OF KEY ISSUES

This item contains a copy of the proposed regulations, the Initial Statement of Reasons and the Notice of Proposed Rulemaking. Approval of this item will initiate the 45-day comment period on the regulations culminating in a public hearing on November 2, 2004.

FISCAL ANALYSIS (AS APPROPRIATE)

The Fiscal Impact Statement will be provided as a Last Minute Memorandum.

ATTACHMENT(S)

- Attachment 1: [Proposed Regulations for Statewide Charter Schools \(7 pages\)](#)
- Attachment 2: [Initial Statement of Reasons \(6 pages\)](#)
- Attachment 3: [Notice of Proposed Rulemaking \(5 pages\)](#)

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 11. Special Programs

Subchapter 19. Charter Schools

Amend Section 11967 to read:

§ 11967. Appeals on Charter Petitions That Have Been Denied.

(a) A charter school petition that has been previously denied by the governing board of a school district must be received by the county board of education ~~or the State Board of Education~~ not later than 180 calendar days after the denial. A charter school petition that has been previously denied by a county board of education must be received by the State Board of Education not later than 180 calendar days after the denial. Any petition received by the county board of education or State Board of Education more than 180 days after denial shall not be acted upon by the county board of education or State Board of Education.

(b) When filing a petition with the county board of education or the State Board of Education for the establishment of a charter school, petitioner(s) shall provide the following:

(1) A complete copy of the charter petition as denied, including the signatures required by Education Code ~~§~~Section 47605.

(2) ~~A copy~~ Evidence of the governing board's action ~~of denial of~~ to deny the petition (e.g. meeting minutes) and the governing board's written factual findings specific to the particular petition, when available, setting forth specific facts to support one or more of the grounds for denial set forth in as required by Education Code ~~§~~Section 47605 (b).

(3) A signed certification stating that petitioner(s) will comply ~~of compliance~~ with all applicable law.

(4) A description of any changes to the petition necessary to reflect the county ~~office~~ board of education or the State Board of Education as the chartering entity as applicable.

(c) The county board of education or State Board of Education shall deny a petition for the establishment of a charter school only if it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the grounds for denial set forth in Education Code ~~§~~Section 47605(b)(1)-(5).

(d) Not later than 60 days after receiving a complete petition package and following review of the petition ~~and a public hearing~~ at a duly noticed public meeting, ~~the~~ a county board of education shall grant or deny the charter petition. This ~~date~~ time period may be extended by an additional 30 days if the county board of education and the petitioner(s) agree to the extension.

(e) Not later than 90 days after receiving a complete petition package ~~and following review of the petition and a public hearing~~, the State Board of Education shall schedule, at its next regular board meeting, an action item to grant or deny the charter petition. This date may be extended by an additional 30 days if the State Board of Education and the petitioner(s) agree to the extension.

(f) In considering charter petitions that have been previously denied ~~by a school district~~, the county board of education or State Board of Education ~~shall~~ are not limited to a its review to based solely on the reasons for denial stated by the school district, ~~but review the charter school petition pursuant to Education Code section 47605(b) or county board, as applicable.~~

NOTE: Authority cited: Sections 33031 and 47605(j)(5), Education Code. Reference: Section 47605(j)(4), Education Code.

Add Section 11967.6, 11967.7, and 11967.8 to read:

§ 11967.6. Submission of Statewide Charter School Petitions to the State Board of Education.

(a) A petition to establish a statewide charter school pursuant to Education Code Section 47605.8 shall:

(1) Comply with all statutory requirements otherwise applicable to charter schools, except those relating to geographic and site limitations (See Education Code Section 47605.8)

(2) If applicable, comply with all requirements of law relative to the provision of independent study.

(A) A charter that does not expressly provide for independent study shall not be interpreted as allowing independent study beyond that which is incidental and required to address the temporary needs of particular students.

(B) If the independent study (nonclassroom-based instruction) exceeds the percentage specified in Education Code Section 47612.5, it shall be funded only in keeping with a determination of funding approved pursuant to Education Code Section 47634.2.

(3) Explicitly acknowledge that an annual independent audit of the school will be conducted in keeping with applicable statute and regulation and indicate how the school's individual sites will be appropriately included in the audit process.

(4) Incorporate a plan that provides for initial commencement of instruction in at least two sites, which shall be in at least two different school districts or two different counties. The plan for instruction shall describe how the instructional services will provide a statewide benefit, as

1 specified in Section 11967.6(b) that cannot be provided by a charter school operating in only
2 one school district, or only in one county.

3 (5) Include an assurance that the instructional services for similar student populations
4 described in the charter will be essentially similar at each site and, thus, that each pupil's
5 educational experience will be reasonably the same with regard to instructional methods,
6 instructional materials, staffing configuration, personnel requirements, course offerings, and
7 class schedules.

8 (6) Describe how the statewide charter school will participate as a member of a special
9 education local plan area, and ensure a coordinated structure for the provision of necessary
10 programs and services specific to students with Individual Education Programs (IEPs).

11 (7) Demonstrated success in operating charter schools previously approved by a local
12 school district or county governing board as evidenced by improved pupil academic data
13 including, but not limited to, a statewide and/or similar schools ranking of 8 or higher on the
14 Academic Performance Index, or other alternative indicators of success as defined in the
15 alternative accountability system pursuant to subdivision (h) of Education Code Section 52052,
16 shall be considered in determining the likelihood of a charter operator to successfully operate a
17 charter of statewide instructional benefit.

18 (8) Describe how local community input for each site included in the plan was solicited (or
19 will be solicited). Satisfaction of this paragraph shall involve the holding of at least one publicly
20 noticed meeting for each site, with a summary of the input received at the meeting(s) being
21 provided.

22 (9) Contain sufficient signatures either of parents, guardians, or of teachers in keeping with
23 Education Code Section 47605(a)(1) for each site proposed in the first year. Sites proposed to
24 begin initial instruction in subsequent years must provide sufficient signatures at the time the
25 summary of input from the public meeting required under (8) of this section is provided.

26 (10) Include an assurance that the school district governing board, the superintendent, the
27 county board of education, and county superintendent where each school site will be located will
28 be notified prior to commencement of instruction.

29 (11) Addresses all charter elements specified in Education Code Section 47605 adapted
30 appropriately for application at the statewide level.

31 (12) Contain or address any provisions or conditions specified by the State Board of
32 Education at the time of charter approval.

1 (13) Contain a plan for operations of the school that describes the distinction between
2 centralized and site level responsibilities and includes a staffing plan to implement the activities
3 at the designated level. The plan shall address school operations including, but not limited to:

4 (A) Facilities and site operations,

5 (B) Legal and programmatic compliance,

6 (C) Financial administration,

7 (D) Governance, and

8 (E) Decision-making authority.

9 (14) Provide a list of each site that will be operated by the school that includes:

10 (A) A timeline for the commencement of instruction at each site. Commencement of
11 instruction must begin during the term of the charter.

12 (B) The general location of each site and the school district and county in which each site is
13 to be located.

14 (C) A description of the potential facilities to be used at each site.

15 (D) The approximate number of pupils that can safely be accommodated at each site.

16 (b) A “statewide” benefit shall include, but not be limited to, the following factors:

17 (1) Unique factors and circumstances related to the school’s educational program that would
18 make the school better able to meet its educational mission as a statewide charter than as a
19 district- or county-authorized charter, including specific benefits to each of the following:

20 (A) The pupils who would attend the school.

21 (B) The communities (including the school districts and the counties) in which the school
22 sites would be located (e.g., in terms of pupil demographics and performance).

23 (C) The state, or to the extent applicable.

24 (D) The school itself (e.g., in fund raising, community partnerships, or relationships with
25 institutions of higher education).

26 (2) Neither a description of administrative or operational benefit to a charter operator, nor an
27 expression of desire by a charter operator to provide services in more than one district and
28 county, shall be considered sufficient in and of itself to constitute a statewide benefit.

29 (c) A statewide charter, regardless of the number of sites, is treated as one organizational
30 entity for all purposes, including but not limited to, compliance monitoring, data reporting and
31 collection, student performance data, oversight, and apportionments. Each organizational entity
32 will receive a unique County-District-School (CDS) district code. Additionally, each site will also
33 receive a unique individual CDS school code for purposes of disaggregation of data by site and
34 grant eligibility. For purposes of compliance monitoring and oversight, the State Board, in its

review, will look at each site's independent progress in meeting AYP and statewide growth targets.

(d) Following its submission, a petition to establish a statewide charter school may be modified or new sites proposed that were not included in the original petition only with the approval of the State Board of Education.

(e) Each statewide charter school shall provide an annual report to the State Board of Education reflecting student achievement data, performance benchmarks, and other pertinent data supporting stated charter goals.

NOTE: Authority cited: Section 33031 and 47605.8, Education Code. Reference: Sections 47612.5, 47634.2, and 47605, Education Code.

§ 11967.7. Evaluation of Facilities for Statewide Charter Schools.

(a) The school shall notify the California Department of Education within 60 days of proposed commencement of instruction at each site, including submission of all documentation required in Section 11967.6(a)(13). Within 30 days of the receipt of a complete and documented request pursuant to this section, the California Department of Education shall evaluate the adequacy and appropriateness of the facilities for the proposed educational program and notify the charter school and any affected local education agency of its determination. The charter school or any affected local education agency may appeal the Department's determination within 10 calendar days of the date of the determination, and the matter will be placed on the agenda of the next regularly scheduled meeting of the State Board of Education. If no action is taken by the State Board of Education, the California Department of Education's determination shall stand.

(b) A school site in its first year of operation may only commence instruction between July 1 and September 30 of that year.

NOTE: Authority cited: Section 33031 and 47605.8, Education Code. Reference: Section 47605.8, Education Code.

§ 11967.8. Funding for Statewide Charter Schools.

(a) A statewide charter school approved pursuant to Education Code Section 47605.8 shall be direct-funded pursuant to Chapter 6 of Part 26.8 of the Education Code (commencing with Section 47630), with the following exceptions:

1 (1) A statewide charter school's general-purpose entitlement pursuant to Education Code
2 Section 47633, except that the charter school's general-purpose entitlement shall be funded
3 entirely from state aid.

4 (2) A statewide charter school does not have a "sponsoring local education agency" as
5 defined in Education Code Section 47632.

6 (b) The warrant for a statewide charter school shall be drawn in favor of the State
7 Superintendent of Public Instruction and a county office of education as follows:

8 (1) In cooperation with the State Superintendent of Public Instruction, the State Board of
9 Education may designate a county office of education as the office responsible for establishing
10 the appropriate funds or accounts in the country treasury for the statewide charter school and
11 for making the necessary arrangements for the school's participation in the State Teachers'
12 Retirement System and/or the Public Employees Retirement System. The county office may
13 charge the school for the actual cost of services.

14 (2) In designating a county office of education, the State Board shall give preference to the
15 county office of education of the county that the charter school identifies as the principal location
16 of its business records.

17 (3) If the county office of education in the county that the school identifies as the principal
18 location of its business records declines to accept the responsibility for the statewide charter
19 school, the State Board of Education may designate another county office of education by
20 mutual agreement.

21 NOTE: Authority cited: Section 33031 and 47605.8, Education Code. Reference: Section 47632
22 and 47651, Education Code.

23
24 *Amend Section 11968 to read:*

25 **§ 11968. Maximum Number of Charters.**

26 (a) If a charter school, including a statewide or countywide charter school, ceases to operate
27 ~~through~~ by voluntary surrender, revocation, or non-renewal of its charter, the charter school's
28 number will lapse and will not be reassigned.

29 (b) On July 1, 1999, and on each succeeding July 1, the limit on the total number of
30 ~~allowable charter petitions~~ schools authorized to operate in this state will be increased by 100.

31 (c) Whenever the statutory limit on the permissible number of charter schools ~~petitions~~
32 authorized to operate in this state is reached, requests for new numbers will be placed on a list
33 in the order received by the State Board of Education.

NOTE: Authority cited: Sections 33031 and 47602(b), Education Code. Reference: Section 47602, Education Code.

Amend Section 11969 to read:

§ 11969. Numbering of Charter School Petitions.

~~Each charter petition granted pursuant to subdivision (j) of Section 47605 of the Education Code and each charter notice received by the State Board of Education pursuant to subdivision (i) and paragraph (5) of subdivision (j) of Section 47605 shall be given one number. For purposes of calculating the maximum total number of charter schools authorized to operate in this state, each petition shall be deemed to authorize one charter school.~~

(a) In accordance with subdivision (a) of Section 47602 of the Education Code, the California Department of Education, on behalf of the State Board of Education, shall establish and administer a numbering system to track the total number of charter schools authorized to operate in the state, based on the chronological order of the receipt of a complete charter petition and notification of charter approval by a local educational agency or, in the case of a charter petition approved by the State Board of Education, the date and time of the State Board's approval.

(b) When the State Board of Education approves a charter petition or receives notice that a charter petition has been approved by a local education agency, the State Board shall assign the school one charter number.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 47602, Education Code.

INITIAL STATEMENT OF REASONS

Statewide Charter Schools

SECTION 11967. Appeals on Charter Petitions That Have Been Denied (Amendment)
SECTION 11967.6. Submission of Statewide Charter School Petitions to the State Board of Education (Addition)
SECTION 11967.7. Evaluation of Facilities for Statewide Charter Schools (Addition)
SECTION 11967.8. Funding for Statewide Charter Schools (Addition)
SECTION 11968. Maximum Number of Charters (Amendment)
SECTION 11969. Numbering of Charter School Petitions (Amendment)

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations will clarify existing law with regard to the State Board of Education's process for reviewing charter petitions that have been denied by a county office of education after denial by a local school district, establish a process and criteria for State Board review and approval of charter schools of statewide interest that will operate on multiple sites, clarify the funding process to be used for statewide charter schools and clarify the State Board's process for numbering charter schools that will operate on multiple sites.

NECESSITY/RATIONALE

AB 1994 (Chapter 1058, Statutes of 2002) amended the Charter School Act of 1992, and added *Education Code* Section 47605.8 that creates new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites. *Education Code* Section 47605.8(a) requires the SBE to adopt regulations to implement this section. Finally, AB 1994 amended *Education Code* Section 47602 related to State Board numbering of charter petitions, and *Education Code* Section 47605(j) related to appeals of charter petitions that have been denied. These amendments of law require conforming and technical amendments to existing regulations.

SECTION 11967

These amendments are necessary because, pursuant to AB 1994, *Education Code* Section 47065(j), now requires a charter petition that has been denied by a district to submit an appeal to the county board of education. Only if the county board denies the petition may the petitioners submit the appeal to the State Board. Prior to AB 1994, a petitioner for a charter denied by a district could submit an appeal directly to either the county board of education or the State Board of Education.

Subsection (a). The proposed amendment to subsection (a) deletes "or the State Board of Education" from the description of the first step in the appeal process. This is a conforming change to remove the option for a charter school that has been denied by a school district to submit an appeal directly to the State Board of Education. This is required because an amendment to *Education Code* Section 47065(j) now requires a charter petition to first submit an appeal to the county board of education. Only if the county board denies the petition may the petitioners submit the appeal to the State Board.

Subsection (b). Item (2) was deleted to recognize that the charter school appellant has no control over the action of the denying entity and therefore, should not be required to submit documents originating from the denying entity.

Subsection (c). This section has been revised to reflect the new sequential process of appeal from the county to the state.

Subsection (d). Amendment provides technical clarity.

Subsection (e). Amendment provides technical clarity.

Subsection (f). The proposed amendment to subsection (f) makes a minor and technical amendment to remove language duplicated in subsection (c).

SECTION 11967.6

Education Code Section 47605.8 creates new responsibilities for the State Board to review and approve charter schools of statewide interest that propose to operate on multiple sites. *Education Code* Section 47605.8(a) requires the SBE to adopt regulations to implement Section 47605.8.

Further, *Education Code* Section 47605.8(d) states, “The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.” Section 47605.6(b)(6) states that the board may deny a petition on any “basis the board finds justifies the denial of the petition.” The section appears to give the State Board broad authority and discretion to establish the criteria and standards for charter approval. Therefore, these regulations are necessary to establish board policy and provide clear guidance to charter petitioners.

Subsection (a). This subsection parallels the requirements in 5 CCR 11967 that established specific application requirements for charter petitions to the State Board. However, multi-site charters present a greater level of complexity than a single site charter. Therefore, this section establishes requirements that are similar to those for single-site charters, but modifies them to address each requirement for each site that will be operated by the charter.

Number 1 conforms to the requirement in *Education Code* Section 47605.8(a) that statewide charter schools comply with all statutory requirements except those related to geographic and site limitations.

Number 2 specifies limitations on the provision of independent study in a statewide charter. Since the law does not provide any flexibility for statewide charters with regard to operating independent study, it is necessary to be explicit here so that independent study providers fully understand the complexity and restrictions of operating independent study programs through a statewide charter.

Number 3 requires the scope of the charter audit to include consideration for each site. This requirement is intended to improve site level management and ensure each site of a multi-site charter is compliant.

Number 4 provides parameters for consideration of a statewide charter. For purposes of this section, a charter must provide for the instruction of pupils “at sites in more than one district or in more than one county” and must initially commence instruction at more than one site. This restriction is consistent with *Education Code* Section 47605.8(a), which requires a statewide charter to “operate at multiple sites through out the state”. This section will ensure a scope of operation that is significantly different from a single site charter.

Number 5 clarifies that a multi-site school must operate essentially the same educational program at each site. This is consistent with *Education Code* Section 47602 that requires a multi-site charter that

operates different educational program to receive separate numbers by the State Board. Further, if a school were to operate significantly different educational programs at each site, it would not be able to meet the test of a single school of statewide benefit. It would be more appropriate for such an operation to seek individual charters from each local district in which it chooses to operate.

Number 6 requires specific information about the school's special education program. The provision of special education services by a single school on multiple sites through the state could be very complicated and problematic. Further, the consequences of noncompliance with special education law are potentially very serious. Therefore, requiring specific information on the school's special education program is justified.

Number 7 requires petitioners to demonstrate that they have previously operated an academically successful charter school as evidenced by a high Academic Performance Index or other indicators of success. This section will help to ensure that charter petitioners who are going to be operating multiple sites in the state have some previous successful experience. This is important because the span of oversight at the state level is much greater than at the local level and the State Board needs to have some assurance that the petitioners are reasonably able to operate a high quality academic program with minimal oversight.

Numbers 8 through 10 establish specific requirements for local input and communication about the charter. Multi-site charters submitted to the State Board could potentially bypass the traditional local consideration for a charter school. Local input for charter development and approval is a key element to the success of charter schools. Therefore, this subsection requires petition signatures, local district notification and public hearings for each site of the proposed charter. This will ensure an opportunity for local input and communication, even though the charter will be authorized at the state level.

Number 11 requires statewide charter petitions to address all of the elements in law that are required of charter petitions approved at the local level or on appeal to the State Board. This section conforms to the requirement that statewide charters meet all requirements in law except geographic and site limitations.

Number 12 requires the statewide charter petition to address any conditions adopted by the State Board at the time of charter approval. This is consistent with State Board actions and authority for charters approved on appeal. This is necessary because the required elements of the petition do not address all of the items that must be in place before a school can open (such as insurance, attendance accounting procedures, etc.). It is reasonable for the State Board to require that such provisions be in place prior to the opening of a new school.

Number 13 of this section requires information about the operation of the multi-site charter. Because of the complexity of operating at several sites, this requirement is necessary to ensure that the schools have a viable operation and administrative plan.

Number 14 requires site-specific information for each site of the multi-site school. This is similar to the site and facility information that is required of all charter schools pursuant to Education Code Section 47605(g).

Subsection (b). This subsection defines what is required of a petitioner to convince the State Board that the multi-site charter will be of "statewide benefit." Statewide benefit is a requirement for State Board approval. "Statewide benefit" is defined in such a way that ensures that the State Board

approval of a multi-site charter would be of greater benefit to the state as a whole, than the loss of the local benefit of approving and overseeing a charter.

Subsection (c). This subsection clarifies the statewide charter is to be treated as one organizational entity (similar to a school district) for all purposes and each individual site is to be treated as an individual school. This subsection is necessary to ensure that for purposes of monitoring AYP and API growth targets the State Board is able to review the progress of individual sites. This subsection will also allow individual sites to apply for grant funding that is applicable to individual schools.

Subsection (d). This section clarifies that a statewide charter may be modified or new sites proposed that weren't in the original petition only with the approval of the State Board. This section is intended to make clear that statewide charters may not be substantially amended without the authorization of their chartering authority (the State Board) and is consistent with *Education Code* Section 47605(a)(4), which requires a charter school seeking to add additional sites to request a material amendment to its charter from its chartering authority.

Subsection (e). This section provides for the submission of an annual report to the State Board by each statewide charter school regarding student performance data, performance benchmarks and other data that supports the charter. This subsection is consistent with the general authority of chartering entities to monitor the academic performance of the charter schools they approve.

SECTION 11967.7

This section provides technical clarity regarding the timelines by which statewide charter schools must submit documentation for each site before it can begin instruction at the site.

Subsection (a). This subsection specifies a time line for statewide charter schools to submit site information required under proposed Section 11967.6(a)(13) and the timeline by which the California Department of Education must evaluate the adequacy and appropriateness of the facilities. This section also requires that the California Department of Education notify the charter school and any affected local education agency of its determination and provides for a process of appeal of the determination. This section is necessary to provide for the orderly submission and review of facilities information and to allow potentially affected local education agencies an opportunity to voice their perspectives on the adequacy of the proposed site.

Subsection (b). This subsection specifically applies *Education Code* Section 47652(b) to statewide charter schools, which requires a charter school to commence operation no later than September 30 of the first fiscal year of operation.

SECTION 11967.8

This section provides technical clarity regarding the funding calculation and process for providing operational funding to statewide charter schools.

Subsection (a). *Education Code* Section 47605.8 establishes new authority for the State Board to authorize and oversee charters schools of statewide interest. These charter schools are not associated with any local school district. However, the charter school funding model authorized in *Education Code* Section 47633 relies on a combination of state and local revenues to fully fund a charter school's block grant. The local revenue comes from the "sponsoring local education agency" which is specifically defined in *Education Code* Section 47632(i). The sponsoring LEA is usually the school district that authorized the charter, or in the case of a charter approved on appeal, the district

that initially denied the charter. The “sponsor” is responsible for the local property tax portion of the charter school block grant. However, in the case of a statewide charter approved pursuant to *Education Code* Section 47605.8, no sponsoring LEA is identified in code. This section clarifies that for purposes of the local tax transfer, there is no “sponsoring LEA” and, therefore, the charter school block grant shall be funded entirely from state aid. Further, because there is no associated LEA in a statewide charter, this subsection also specifies that a statewide charter must be direct-funded for purposes of the charter school funding model.

The alternative to this method would be to require the “sponsor” to be “the pupil’s school district of residence”. This is the definition used for certain county authorized charter schools as specified in *Education Code* Section 47632(i)(4). However, the complexity in collecting and calculating this information for a charter school that may enroll students from any district in the state would be virtually impossible to administer. The resources required to attempt it would far outweigh the value of the local tax offset. Therefore, the method proposed here is the most reasonable given the lack of clear legislative direction on this issue.

Subsection (b). This subsection clarifies a process by which a statewide charter school becomes associated with a county office of education for purposes of receiving funding. Because there is no LEA associated with a statewide charter school, a county office must be assigned to act as the LEA for purposes of establishing funding transfers for a statewide charter school.

SECTION 11968

These amendments are necessary to align the charter numbering process more closely with the language in *Education Code* Section 47602 as amended by AB 1994, and the amendments to Section 11969 that are proposed below.

SECTION 11969

These amendments are necessary because, pursuant to AB 1994 amendments to *Education Code* Section 47602, the State Board must now provide a separate charter number for each site of a charter school that does not share a common educational program. This section has also been revised to more closely align the numbering process with the intent of *Education Code* Section 47602 to track the number of charters authorized to operate in the state at any given time. Finally, the subsection has been rewritten to give explicit responsibility to the California Department of Education to establish and administer a charter school numbering system on behalf of the State Board.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the State Board.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The State Board has not identified any alternatives that would lessen any adverse impact on small

business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have a significant adverse economic impact on any business because they only provide clarity for charter schools for the purposes of claiming K-12 average daily attendance for apportionment purposes.

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; Room 5111
Sacramento, CA 95814



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

State Board Review of Multi-site Charters of Statewide Interest
[Notice published September 17, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **1:30 p.m. on Tuesday, November 2, 2004**, at 1430 N Street, Room 2102, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on November 2, 2004**. The State Board will consider only written comments received by the Regulations Coordinator or at the State Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Sections 33031, 47602, 47605 and 47605.8, Education Code.

References: Sections 47602, 47605, 47605.6, 47605.8, 47612.5, 47632, 47634.2 and 47651, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulations packet includes six sections; three sections are amended and three new sections are added. These regulations are necessary to implement AB 1994 (Chapter 1058, Statutes of 2002) which amended and added to the Charter School Act of 1992.

The first section amends 5 CCR 11967 to conform to an amendment of Education Code Section 47605(j), which was amended to require a denied charter to appeal to the county board of education prior to appealing to the State Board of Education (SBE). Previously, a charter that was denied by a school district could appeal to either the county board or the SBE. The amendments to this section are largely technical and conforming to reflect the change in the sequence of a charter appeals.

The second section adds 5 CCR 11967.6, which is necessary pursuant to Education Code Section 47605.8(a). Education Code Section 47605.8 creates new responsibilities for the State Board to review and approve charter schools of statewide benefit that propose to operate on multiple sites. The law requires the SBE to adopt regulations to implement Section 47605.8.

Education Code Section 47605.8 states:

“(a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be

monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.”

The SBE previously adopted regulations describing the criteria and process for SBE review and approval of charters that have been denied by local entities. They are included in 5 CCR 11967 through 11967.5.1. These existing regulations are used as a reference and basis in implementing regulation for Education Code Section 47605.8. However, Education Code Section 47605.8 creates a new type of State Board-approved charter school that requires additional considerations that are not addressed in existing regulations.

The third section adds 5 CCR 11967.7 to provide technical clarity regarding the time lines for submission of documentation on the adequacy of facilities proposed to be used for statewide charter schools and for California Department of Education to review the adequacy and appropriateness of such facilities.

The fourth section adds 5 CCR 11967.8 to provide technical clarity regarding the funding calculation and process for providing operational funding to statewide charter schools and to specify that for purposes of local tax transfers, a statewide charter does not have a “sponsoring local education agency”.

The fifth section amends 5 CCR 11968 related to the number of charter schools authorized to operate in the state. These amendments are necessary to align the charter numbering process more closely with the language in Education Code Section 47602 as amended by AB 1994, and the amendments to Section 11969 that are proposed to 5 CCR 11969 below.

The last section amends 5 CCR 11969 regarding the numbering of charter petitions by the SBE. This amendment is necessary to implement an amendment to Education Code Section 47602, which was also enacted through AB 1994. This section now requires the SBE, in its charter-numbering process, to consider providing separate charter numbers to each site of a multi-site charter that offers differing educational programs. This amendment also clarifies that the California Department of Education is to establish and administer the charter numbering system on behalf of the SBE.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: TBD

Cost or savings to any state agency: TBD

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: TBD

Other non-discretionary cost or savings imposed on local educational agencies: TBD

Cost or savings in federal funding to the state: TBD

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: TBD.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: TBD.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because the regulations only relate to local school districts and not to business practices.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Deborah Connelly, Education Program Consultant
California Department of Education
Charter Schools Division
1430 N Street, Room 5401
Sacramento, CA 95814
Telephone: (916) 323-2694
E-mail: dconnelly@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED

REGULATIONS

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/re/lr/rr/>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Deborah Connelly, Charter Schools Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0217; fax, (916) 322-1465. It is recommended that assistance be requested at least two weeks prior to the hearing.